

Unconfirmed
THE HEALTH PROFESSIONS COUNCIL

Chief Executive and Registrar: Mr Marc Seale

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MINUTES of the fourteenth meeting of the Conduct and Competence Committee held at **10:30am on Tuesday 19 April 2005** at the Park House, 184 Kennington Park Road, London, SE11 4BU.

Dr S Yule (Chairman)
 Professor N Brook
 Ms M Clark-Glass
 Mr R Clegg
 Ms H Davis
 Ms C Farrell
 Professor C Lloyd
 Mr K Ross
 Miss P Sabine
 Dr G Sharma
 Mrs. B. Stuart
 Mr G Sutehall

IN ATTENDANCE:

Mr C Bendall, Secretary to Committees
 Ms S Butcher, Secretary to Committees
 Mr M Calligy, Case Manager
 Miss K Johnson, Director, Fitness to Practise

Item 1.05/52 INTRODUCTION AND WELCOME

- 1.1 The Chairman welcomed all members to the meeting.

Item 2.05/53 APOLOGIES FOR ABSENCE

- 2.1 No apologies for absence were received and the following Committee member was noted to be on long term sick leave, Ms J Manning.

Item 3.05/54 APPROVAL OF AGENDA

- 3.1 The Conduct and Competence Committee approved the agenda.

Item 4.05/55 MINUTES

- 4.1 It was agreed that the minutes of the thirteenth meeting of the Conduct and Competence Committee be confirmed as a true record and signed by the Chairman subject to the correction of Carol Lloyd's title who had been entered as a Mrs when it should read Professor.

Item 5.05/56 MATTERS ARISING

- 5.1 Item 5.3.1 – Matters Arising – Director of Fitness to Practise Report
- 5.1.1 The Conduct and Competence Committee noted that further information had been requested on the 10 ODP's that had not been transferred across to the Register. The Director of Fitness to Practise reported that she would clarify this in her report.
- 5.2 Item 6.3 - Matters Arising- Chairman's Report
- 5.2.1 The Conduct and Competence Committee noted that at its last meeting it recommended that a policy be devised to clarify the circumstances in which claims for loss of earnings was appropriate. The Director of Fitness to Practise reported that this had gone to the Finance and Resources Committee and would be presented to Council at its next meeting on 12 May 2005.
- 5.3 Item 7.11 & 7.12 – Matters Arising – Director of Fitness to Practise Report
- 5.3.1 The Conduct and Competence Committee noted that at its last meeting it considered the consistency in reports as produced by legal assessors. The Committee noted that further feedback would be given by the Director of Fitness to Practise on the progress of the improvements that had been made.

Item 6.05/57 CHAIRMAN'S REPORT

- 6.1 The Conduct and Competence Committee received an oral report from the Chairman.
- 6.2 The Chairman reported that the fitness to practise panels had been very busy with case hearings and that he had little to report in addition.

Item 7.05/58 DIRECTOR OF FITNESS TO PRACTISE REPORT

- 7.1 The Conduct and Competence Committee received a paper from the Director of Fitness to Practise.
- 7.2 The Director of Fitness to Practise reported that there had been 4 striking off orders, 3 suspension orders, 3 conditions of practise orders, 2 caution orders, 1 case had not been well founded and 3 cases were adjourned. One case had been referred to the Health Committee Panel

by the Conduct and Competence Committee Panel and vice versa in March. The Committee noted that since its last meeting the fitness to practise department had been very busy. In 2004/05 172 allegations had been received and matches the exact number of cases dealt with by Investigating Panels. The Director of Fitness to Practise reported that there were currently 13 cases within the remit of the Conduct and Competence Committee and of this number 6 cases required a review hearing and dates for 6 hearings had been fixed.

- 7.3 The Committee noted that further panel training had been arranged for 20th and 21st April 2005 and 6th and 7th June 2005. The next legal assessor review day was planned for 24th June 2005 and panel chair training would take place on 16th June 2005. Interviews for panel chairs were scheduled on 20th – 22nd April 2005, the President for HPC, Norma Brook with Sir Michael Schofield Director of the NHS Appointments Commission would convene the panels.
- 7.4 The Committee noted that meetings had taken place with CHRE, Kingsley Napley Solicitors, Bircham Dyson Bell and a whole host of additional relevant groups/bodies to help in the work of the fitness to practise department.
- 7.5 The Director of Fitness to Practise reported that the case of Jellet would be addressed at Councils next meeting on 12 May 2005. The Committee noted that as one case had not been well founded the details would not be made available on the HPC website as in accordance with the Health Professions Order 2001 “the Order”. The Committee considered the need to review cases which had not been well founded and recommended that the Director of Fitness to Practise provide anonymised examples of such instances.

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- 7.6 The team were working with the IT department to create an FTP tracking system, brochures, witness support pack, FTP Annual Report, Protocol with NHS Counter Fraud Squad, FTP Benchbook, Prosecutions Procedures and Health and Character Declarations (not references as stated in report).
- 7.7 The Director of Fitness to Practise reported that Mr M Calligy had now been recruited to the post of Case Manager. The Committee welcomed him on board in his new role.
- 7.8 The Committee considered what trends existed with regard to the extent of legal representation appointed for cases. The Committee requested that statistics be provided on this as it was felt that it would have implications for cost and would indicate how long cases do actually proceed for. The Director of Fitness to Practise reported that she would review these figures.

Item 8.05/59 CONDUCT AND COMPETENCE COMMITTEE REPORT FOR ANNUAL REPORT

- 8.1 The Conduct and Competence Committee received a paper from the Secretary to Committees for discussion/approval.
- 8.2 The Committee discussed the committee report that was presented to members for submission with the Annual Report. Committee members noted that it was similar to last years report and that it must be mindful of not repeating issues that had already been addressed.
- 8.3 The Conduct and Competence Committee approved the paper.

Item 9.05/60 AUTHORISED PERSONS

- 9.1 The Conduct and Competence Committee received a paper from the Director of Fitness to Practise for discussion/approval.
- 9.2 The Committee noted that Article 25(1) of the Health Professions Order 2001 provided for “authorised persons” to be appointed to conduct investigations on behalf of the practise committees.
- 9.3 Article 37(7) of that Order made similar provisions in relation to registration appeals and, by virtue Paragraph 8.7 of its Scheme of Delegation, the Council had delegated to the Director of Fitness to Practise:

“...appointing authorised persons for the purposes of Article 37(7) and, by virtue of that provision, Article 25(1) of the 2001 Order in relation to registration appeal proceedings.”

- 9.4 The Committee noted that in order to ensure that any delegation by the Practise Committees was consistent with that made by Council, the Committee was asked to pass the following resolution:

“That the Committee’s power to appoint authorised persons for the purpose of Article 25(1) of the Health Professions Order 2001 be delegated to the Director of Fitness to Practise.”

- 9.5 The Director of Fitness to Practise reported that the paper had been scrutinised by the legal advisor for the Health Professions Council (HPC) and was content with its structure.
- 9.6 The Conduct and Competence Committee approved the paper for Authorised Persons.

Item 10.05/61 REPORT ON THE 5TH REPORT OF THE SHIPMAN INQUIRY

- 10.1 The Conduct and Competence Committee received a paper for from the Secretary to Committees for discussion/approval.
- 10.2 The Committee noted that following Council's meeting on the 2nd March 2005, the three fitness to practise committees' had been asked to consider the Fifth Report of the Shipman Inquiry and its implications for the HPC. Council also recommended that the Committees consider and define what was meant by good practise.
- 10.3 The Director of Fitness to Practise reported that there would be huge cost implications if all of the recommendations made by Dame Janet Smith in the fifth Report of the Shipman Inquiry were to be incorporated into current HPC procedures. The recommendation for the appointment of legally qualified chairmen was raised as a concern as the cost of this would inevitably be passed on to the registrant by the raising of their fees. The Conduct and Competence Committee also noted the recommendation that consideration should be given to the appointment of a body of full-time panellists who could sit on the fitness to practise panels of all the healthcare regulatory bodies. A case management strategy was also being implemented that now separated the role of the hearing officer from that of the case manager. The hearing officer post was currently being recruited for and would be responsible for scheduling and managing hearings, including contacting the partners who are to serve on that Panel.
- 10.4 The Chief Executive reported the latest developments that had evolved in response to the Shipman Inquiry, namely that two special committees had been set up by Lord Warner, Secretary of State for Health to specifically review the following issues:

The Chief Medical Officer for England, Sir Liam Donaldson
Donaldson Committee:

1. Continuous Professional Development (CPD) and revalidation of the General Medical Council (GMC).
2. Procedures to be used by healthcare regulators.

Mr Andrew Foster, Director of Workforce. The Committee noted that Foster had a varied background was a Civil Servant and was Head of Human Resources for the NHS, PAYE pensions etc.

Foster Committee:

1. Continuous Professional Development (CPD) and revalidation of all other healthcare professionals.
2. Fitness to practise procedures to be used by regulators of healthcare professionals
3. Number of regulators required

- 10.5 The Committee noted that the Chief Executive and President of HPC had been asked to participate in a personal capacity in the Foster review but not as representatives of the HPC. It was noted that the more recently established regulatory bodies were paving the way forward as they had the most experience of contemporary legislation in practise. The Chief Executive of the Nursing and Midwifery Council (NMC) Sarah Thewlis and their President Mr Jonathan Asbridge had also been invited to contribute to the discussions of the advisory group. No other members from professional bodies had been asked to participate and to this end other regulatory bodies were currently petitioning Lord Warner for their voices to be heard. Two larger reference groups had also been set up to support these processes and were comprised of education and training bodies, professional organisations as well as consumer and healthcare quality interests. It was anticipated that the findings of both committees would be made available as of December 2005.
- 10.6 The Chief Executive reported that a key consideration of the Foster Committee would be a consolidation into fewer than the nine healthcare regulators that currently existed. The Committee agreed that there must be consistency across all of the healthcare regulators in the carrying out of their functions and this was one way in which this could be effectively achieved.
- 10.7 The Committee discussed the fact that currently the Conduct and Competence Committee Panels had no powers to impose a sanction that involved the re-training or education of a health professional. The Committee noted that conditions of practice were the only mechanism available to panels by which a registrant's conduct and or competence could be addressed. Whilst a panel may advise a registrant to seek re-training there was no assurance that this would be carried out. To this end the Committee agreed that it would be beneficial for such a modification to the Order so that this could be applied where it was evident that re-training should be sought.
- 10.9 The Committee noted the need to identify in partnership with the other two practice committees, Health and Investigating what the greater implications were for the HPC of the fifth Report on the Shipman Inquiry. The Committee noted that the GMC had requested questions for submission to the Foster and Donaldson committees of which at least forty had been received to date. The Chief Executive reported that if the findings of the Foster Committee were available they would be presented at the last meeting of Council on 7 July 2005. The Committee therefore recommended that a meeting should be called between all three fitness to practise committees in the next 2-3 months following the findings of the Foster and Donaldson Committees and a draft response to Council constructed highlighting the main implications. A bulleted list would be provided at this meeting so to

highlight those things that the HPC were perhaps not incorporating into their processes which Dame Janet Smith had recommended.

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Item 11.05/62 MEDIATION

- 11.1 The Conduct and Competence Committee received a paper from the Director of Fitness to Practise to note.
- 11.2 The Committee noted that the Alternative Dispute Resolution Group (ADR) had given an informal presentation to Council on 1st February 2005 regarding their function in assisting with mediation processes. Council had appointed the company ADR to assist with mediation on a case by case basis if and when directed by the Fitness to Practise Director (via an appropriately qualified mediator).
- 11.3 The Director of Fitness to Practise reported that members had recommended for specific case examples to be provided that illustrated where mediation could be used but was unable to supply such information as no such cases had suitably transpired. In accordance with Article 26(6) and 29(4) a case had to be well founded before mediation could be undertaken (but not a fraudulent or incorrect register entry allegation). In practice mediation was not used by HPC as it was not congruent with the nature of the cases that it dealt with i.e. fitness to practise cases that concerned a registrant's health, conduct and or competence. The Committee noted that the only instance in which a case for mediation could be identified were those that arose from registrants making personal claims about another registrants capabilities as a health professional, beyond this it was difficult to pinpoint how mediation could be used as an effective fitness to practise tool.
- 11.4 The Chief Executive reported that errors had been made by the Privy Council in the drafting of the Health Professions Order 2001 ("the Order"). One of these included the inappropriate placing of mediation, in addition to which reference to panel and alternate members had been omitted. In the next 18 months the Chief Executive would be requesting that the Privy Council review these errors for correction. The Committee noted that this would be very beneficial.

Item 12.05/63 CASE MANAGEMENT STRATEGY

- 12.1 The Conduct and Competence Committee received a paper from the Director of Fitness to Practise for information.
- 12.2 The Committee noted that in order for the Health Professions Council (HPC) to effectively manage its fitness to practice function in a manner which meets its primary obligation of protecting the public, it would

need to implement a robust case management system/strategy. Part of this need had been driven by the implications of the 5th Report of the Shipman Inquiry. The role of the Hearing Officer and Case Manager was being separated so that caseloads could be more effectively managed. A Hearing Officer was therefore being recruited and 2 further Case Managers in 2005/06. The Case Managers would have a more proactive role in investigating cases. The less complex cases would be given to HPC fitness to practise staff thus reducing the reliance upon external legal providers. The Committee noted that Partner Chairs were currently being recruited. The first phases of interviews were scheduled for 20-22 April 2005 and the interview panel was comprised of Norma Brook, HPC President and Sir Michael Schofield from the NHS Appointments Commission.

- 12.3 The Committee recommended the following corrections be made to the case management strategy document, on page 3 to remove ‘and Primary Care Trusts’ and ‘NHS’ so that it read ‘strengthen relationships with employers of registrants and Local Authorities to ensure that information about workplace disciplinary cases is shared;’. This same correction had been highlighted by the Health and Investigating Committees.

Item 13.05/64 FITNESS TO PRACTISE ANNUAL REPORT

- 13.1 The Conduct and Competence Committee received a paper from the Director of Fitness to Practise for information.
- 13.2 The Director of Fitness to Practice apologised for the late submission of the Fitness to Practice Annual Report, however as it was a lengthy and detailed document it had taken some time to devise. With this in mind the Conduct and Competence Committee members were asked to submit any comments for amendments, corrections and or inclusions to the Director of Fitness to Practice via e-mail by Friday 22 April 2005 so that they may be incorporated accordingly.
- 13.3 The Director of Fitness to Practice confirmed that a verification meeting would take place with HPC's legal scrutinizer's so to ensure that there was consistency in the report and to correct any typographical or grammatical errors. The Committee was therefore asked to review the report for any items that perhaps should be incorporated that were not there currently. The Committee recommended that at the end of the report a conclusion be provided indicating lessons learnt for the future with recommendations for improvements. The Chief Executive noted that based upon this recommendation perhaps it would be more pertinent for the Director of Fitness to Practice to include a one page document giving an overview of the FTP department and its practices such as is produced for the HPC Annual Report by the President and Chief Executive. The Committee also recommended that in this summary it should be made

clear that it is the registrants who are paying for these services. The Committee noted that reference should be made to how the HPC are responding to the Shipman Inquiry.

Item 14.05/65 ANY OTHER BUSINESS

- 14.1 Professor Brook and the Chief Executive thanked the Chairman Dr S Yule for all of his work and commitment to the Conduct and Competence Committee and to regulation of the health professions. Thanks were also extended to Professor C Lloyd and Professor G Sutehall who were not standing in the HPC elections currently being undertaken. In particular Professor G Sutehall's attention to detail was applauded and noted as a very useful tool at the inception of the committees work.

Item 15.05/66 DATE AND TIME OF NEXT MEETING

- 15.1 The next meeting of the Conduct and Competence Committee would be on Monday 19 September 2005.

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